ORDINANCE NO. 3

Series, 1955

AN ORDINANCE RELATING TO, AND PROVIDING FOR, A LICENSE OR OCCUPATIONAL TAX UPON CERTAIN BUSINESSES, OCCUPATIONS, PURSUITS AND PRIVILEGES; DEFINING OFFENSES AND PROVIDING PENALTIES.

THE CITY OF ELGIN ORDAINS AS FOLLOWS:

Section 1: Exercise of Revenue License Power:

The provisions of this ordinance shall be deemed an exercise of the power of the City of Elgin to license for revenue.

Section 2: Definitions:

In construing the provisions of this ordinance, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

(a) Gross Income:

The value proceeding or accruing from the sale of tangible property or service, and receipts, (including all sums earned or charged whether received or not) by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however, designated (excluding receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages, or other evidence of indebtedness, or stocks and the like) and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, or any expenses whatsoever, and without any deduction on account of losses.

(b) Person or Persons:

Persons of either sex, firms, co-partnerships, corporations, public utility districts, and other associations of natural persons whether acting by themselves or by servants, agents or employees.

(c) Taxpayers:

Any person liable to the license fee or tax imposed by this ordinance.

(d) Tax Year or Taxable Year:

The year commencing January 1st and ending on the last day of December of said year, or, in lieu thereof, the taxpayer's fiscal year when permission is obtained from the City Clerk to use the same as the tax period.

Section 3: Occupation License Required:

After the 1st day of September, 1955, no person shall engage in or carry on any business, occupation, pursuit or privilege for which a license fee or tax is imposed by this ordinance without having first obtained, and being the holder of, a valid and subsisting license so to do, to be known as an Occupation License.

Any person engaging in, or carrying on, more than one such business, occupation, pursuit or privilege shall pay the license tax so imposed upon each of the same.

Any taxpayer who engages in, or carries on, any business subject to the tax hereunder, without having his "Occupational License" so to do, shall be guilty of a violation of this ordinance for each day during which the business is so engaged in or carried on, and any taxpayer who fails or refuses to pay the license fee or tax or any part thereof on or before the due date shall be operating without having his license so to do.

Section 4: License Tax Year:

All "Occupation Licenses" shall be for the tax year for which issued and shall expire at the end of such tax year.

Such "Occupational License" and the fee or tax therefor hereby imposed shall be for the year commencing January 1st and ending on the last day of December of said year; Provided, however, that if the taxpayer in transacting his business keeps the books reflecting the same for a fiscal year not based on the calendar year, he may, with the assent of the City Recorder, obtain his license for the period of his current fiscal year which sall be deemed his tax year, and pay the fee or tax computed upon his gross income made during his fiscal year (next prededing his tax year) covering his accounting period as shown by the method of keeping the books of the business.

Section 5: Occupations Subject to Tax-Amount:

There are hereby levied upon, and shall be collected from, the persons on account of the business activities annual license fees or occupational taxes in the amounts to be determined by the application of the rates against gross income, as follows:

(a) Upon every person engaged in or carring on the business of a telegraph and/or telephone business, a fee or tax equal to three per cent (3%) of the total gross income from such business in the City of Elgin, Oregon, during the fiscal year next prededing the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than the sum of Five Hundred Dollars ($500.00) per tax year.

Deleted by Ordinance #12, Series 1963

(b) Upon every person engaged in or carrying on the business of selling or furnishing natural or manufactured gas, a fee or tax equal to two per cent (2%) of the total gross income from such business in the City of Elgin during his fiscal year next preceding the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than Two Hundred Dollars ($200.00) per tax year.

Section 6: Tax Apportioned for Year 1955:

For the remainder of the tax year 1955, ending on the last day of December, 1955, the fees or taxes herein imposed shall be apportioned in the ratio of said remainder to a full tax year.

Section 7: Exceptions and Deductions:

There shall be excepted and deducted from the total gross income upon which the license fee or tax is computed so much thereof as is derived from transactions in inter-state or foreign commerce, or from business done for the government of the United States, its officers or

agents, and any amount paid by the taxpayer to the United States, the State of Oregon, or the City of Elgin, Oregon, as excise taxes levied or imposed upon the sale or distribution of property or service.

There shall be excepted and deducted from the total gross income upon which the license fee or tax is computed all bad debts for services icurred, rendered or charged for during the tax year, or for a preceding tax year if the charge off is made in the current tax year. Debts shall be demmed bad and uncollectable when the same have been written off the books of the taxpayer. In the event debts are subsequently collected, said income shall be reported in the return for the tax year in which said debts are collected and at the rate prevailing in the tax year when collected.

There shall be excepted and deducted from the total gross income upon which the license fee or tax is computed all cash discounts allowed and actually granted to customers of the taxpayer during the tax year.

Nothing in this ordinance shall be construed as requiring a license or the payment of a license fee or tax, or the doing of any act, which would consititue an unlawful burden or interference in violation of the Constitution or laws of the United States or which would not be consistent with the constitution or laws of the State of Oregon.

Any person subject to the payment of a license fee or tax under the provisions of any ordinance of the City of Elgin, Oregon, other than this, on account of engaging in any activity for which he is liable to tax hereunder, may deduct the amount of such fee or tax in the amount fee or tax imposed by this ordinance on account of such activity, but such persons shall nevertheless, in the manner herein provided for, apply for and procure an "Occupational License."

Section 8: Application or Return of License:

On or before the 1st day of September, 1955, and thereafter on or before the 1st day of each tax year every taxpayer shall apply to the City Recorder for an "Occupational License" upon blanks or forms of returns to be prepared and provided by him or her requesting such information as may be necessary to enable him or her to arrive at the lawful amount of the fee or tax. The taxpayer shall, in a legible manner, write in such blank or form of return, the information required and shall sign the same and by affidavit at the foot thereof shall swear or affirm the information therein givin is full and true and that he knows the same to be so.

Every such application or return shall be accompanied by a remittance by bank draft, certified check, cashier's check or money order, payable to the City of Elgin, Oregon, in the amount of the tax or fee or installment thereof required by the provisions hereof.

If the applicant be a partnership, the application or return must be made by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, co-partnership or non-resident individual, by the resident agent or local manager of said corporation, co-partnership or individual.

Section 9: Monthly and Quarterly Payment of Tax:

Where the amount of thelicense fee or tax is based upon gross income, the taxpayer may pay his fee or tax in equal monthly installments during the life of his license, each such installment to be paid on or before the 10th day of the month. In all other cases the taxpayer shall pay his fee or tax in equal instalments during the life of his license, each instalment to be paid on or before the 1st day of march, the 1st day of June, the first day of September and the 1st day of December of each year, respectively.

Section 10: When Tax Based on Current Year--Commencement of Business During Tax Year:

Where a business, occupation or pursuit subject to tax upon gross income has not been carried on for the full calendar or fiscal year next prededing the tax year for which license is required, the license fee or tax shall be paid monthly in installments during the life of the license on or before the 10th day of the month, and shall be based on the gross income for the month next preceding that in which the payment is due. In such cases the taxpayer shall make monthly returns similar to the annual returns provided for herein on or before the 10th day of the month.

In all other cases where a person commences during any tax year to engage in any business occupation, pursuit or privilege, he shall be entitled to a license for the remainder of such tax year for the required fee apportioned in the ratio of ssid remainder to a full tax year.

Section 11: Monthly Payments--License Prerequisite:

In any case where tha taxpayer pays his license fee or tax monthly he shall nevertheless first procure his "Occupational License" in the manner herein required before commencing or continuing in business, and shall pay the minimum fee or tax therefor, which shall be credited against future installments.

Section 12: Sale or Transfer of Business:

Upon the sale or transfer during any tax year of a business on account of which a fee or tax is hereby required, the purchaser or transferee shall, if the fee or tax has not been paid in full for said year, be responsible for its payment for that portion of said year during which he carries on such business.

Section 13: Taxpayer to Keep Books and Records--Returns Confidential:

It shall be the duty of each taxpayer taxed upon his gross income to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of his gross income, which account shall always be open to the inspection of the City Recorder, and/or his or her duly authorized agent, and from which said officer or his agent may verify the return made by the taxpayer.

The applications, statements or returns made to the City Recorder pursuant to this ordinance, shall not be made public, nor shall they be subject to the inspection of any person except the Mayor, the City Attorney, the City Recorder, or his authorized agent, and members of the City Council.

Section 14: Recorder to Investigate Returns:

If any taxpayer fails to apply for license or make his return, or if the City Recorder is dissatisfied as to the correctness of the statement made in the application or return of any taxpayer, said officer, or his authorized agent, may enter the premises of such taxpayer at any reasonable time for the purpose of inspecting his books or records of account to ascertain the amount of the fee or tax or to determine the correctness of such statements, as the case may be, and may examine any person under oath administered by said officer, or his agent, touching the matters inquired into, or may fix a time and place for an investigation of the correctness of the return and may issue a subpoena to the taxpayer, or any other person, to attend upon such investigation and there testify

under oath administered by said officer, or his agent, in regard to the matters inquired into and may, by subpoena require him, or any person, to bring with him such books, records and papers as may be necessary.

Section 15: Over or Under Payment of Tax:

If the City Recorder upon investigation or upon checking returns finds that the fee or tax paid on any of them is more than the amount required of the taxpayer, he shall refund the amount over-paid by a warrant upon the General Fund. If the City Recorder finds that the fee or tax paid is less than required, he shall send a statement to the taxpayer showing the balance due, who shall within three (3) days pay the amount shown thereon.

Section 16: Remedy for Non-Payment of Tax:

If any taxpayer fails to apply for license, or make his return, or to pay the fee or tax therefor, or any part thereof, within three (3) days after the same shall have become due, the City Recorder shall ascertain the amount of the fee or tax or installment thereof due and shall notify such taxpayer thereof, who shall be liable therefor in any suit or action by the City for the collection thereof. The City Recorder shall also notify the City Attorney in writing of the name of such delinquent taxpayer and the amount due from him and said officer shall, with the assistance of the City Recorder, collect the same by any appropriate means or by suit or action in the name of the City.

Section 17: Appeals to City Council:

Any taxpayer aggrieved by the amount of the fee or tax found by the City Recorder to be required under the provisions of this ordinance, may appeal to the City Council from such finding by filing a written notice of appeal with the City Recorder within five (5) days from the time such taxpayer was given notice of such amount. The Recorder shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall not be more than ten (10) days after the filing of the notice of appeal, and he shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The City Council shall thereupon ascertain the correct amount of the fee or tax by resolution and the City Recorder shall immediately notify the appellant thereof, which amount, together with costs ofthe appeal, if appellant is unsuccessful therein, must be paid within three (3) days after such notice is given.

The Mayor of the City of Elgin, Oregon, may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any and shall testify truthfully under oath administered by the Mayor as to any matter required of him pertinent to the appeal, and it shall be unlawful for him to fail or refuse so to do.

Section 18: Recorder to Make Rules:

The City Recorder shall have the power, subject to the approval of the City Council, and it shall be his duty, from time to time, to adopt, publish and enforce rules and requlations not inconsistent with this ordinance or with law for the purpose of carrying out the provisions thereof, and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

Section 19: Licenses--Posting--Unlawful Use of:

All licenses issued pursuant to the provisions of this ordinance shall be kept posted by the licensee in a conspicuous place in his principal place of business in the City.

No person to whom a license has been issued, pursuant to this ordinance, shall suffer or allow any other person chargable with a separate license to operate under or display his license, nor shall such other person operate under or display such license.

Section 20: False Returns, Etc.:

It shall be unlawful for any person liable to tax hereunder to fail or refuse to make application or return for a license or to pay the fee or tax or installment thereof when due, or for any person to make any false or fraudulent application or return or any false statement or representation in or in connection with, any such application or return, or to aid or abet another in any attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear and/or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the City or any of its officers in carrying out the provisions of this ordinance.

Section 21: Effect of Partial Invalidity:

If any provisions or sections of this ordinance shall be held void or unconstitutional, all other parts, provisions and sections of this ordinance not expressly so held to be void or unconstitutional shall continue in full force and effect.

Section 22: Penalty:

Any person violating or failing to comply with any of the provisions of this ordinance or any lawful rule or regulation adopted by the City Recorder pursuant thereto, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in any sum not to exceed One Hundred Dollars ($100.00) or by imprisonment in the City Jail for a term not to exceed thirty (30) days, or by both such fine and imprisonment. Each and every day that the violation of this ordinance shall be continued is a separate offense and punishable as herein provided.

PASSED this 26TH day of July, 1955, by 7 Councilmen voting therefor.

APPROVED this 26TH day of July, 1955.

Attested and filed this 26TH day of July, 1955.

Rex C. Roulet
MAYOR

J. P. Miller
CITY RECORDER